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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1942

RICHARD ERZNOZNIK, as Manager of the University Drive-In Theatre,

Appellant,

—v.—

CITY OF JACKSONVILLE,

Appellee.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL, FIRST DISTRICT OF FLORIDA

BRIEF OF THE AUTHORS LEAGUE OF AMERICA, INC. AS *AMICUS CURIAE*

IRWIN KARP
Attorney for The Authors League of America, Inc. as Amicus Curiae
284 W. 44th Street
New York, N. Y. 10036

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Interest of The Authors League

The Authors League is the national society of professional writers and dramatists. Several of its members write motion picture screenplays; and many books and plays by League members have been adapted as motion pictures. The Authors League's fundamental purpose is to express the views of authors in cases involving freedom of expression, and to support that fundamental Constitutional right. Because The Authors League believes the Jackson-

ville Ordinance violates freedom of expression, by restraining exhibition of motion pictures which are not obscene, it files this brief—with the consent of the parties.

Argument

i) The Jacksonville Ordinance prohibits exhibition by drive-in theatres of motion pictures that are not obscene under the *Miller* v. *California* standard; it bans the showing of films that do not present "hard-core pornographic" sexual conduct. Under the Ordinance, a film would be banned if it contains a ten second shot of a man in bathing trunks ("human bare breasts"), or a five second frontal view of a woman emerging unclad from a shower (ibid), or a three second long shot of the back of a man or woman wading in the surf unclad ("human male or female bare buttocks"). The Ordinance thus would ban films that contain brief views of the human anatomy that are accessible to any man, woman or child who wanders past a newsstand, turns on a television set, or chances into a museum housing reproductions of paintings by Rubens or Titian or statues by Rodin or the early Grecians.

The Ordinance is so broad that it prohibits exhibition of many motion pictures that are entitled to absolute First Amendment protection whether shown in buildings or drive-ins. It violates the First and Fourteenth Amendments.

ii) These ephemeral scenes in a motion picture cannot be compared to an enlarged photograph of explicit sexual conduct displayed by a billboard on a street; or a similar photograph on a poster in a bus. The billboard or poster are fixed and permament displays. Scenes in a motion pic-

ture revealing breasts or buttocks are ephemeral and transitory; and, as a practical matter, are not accessible to individuals outside the drive-in—even if by dint of struggle for strategic position, they can bring the screen within their view.

More important, these transitory scenes in a film are an integral part of a dramatic work protected by the First Amendment, not a piece of advertising separate from the work.

Drive-in theatres do not thrust motion pictures on "captive audiences." Most drive-ins are built, by necessity, in open areas. When the screens become visible to individuals in their homes, it is because the homes have been built near these pre-existing theatres. The Jacksonville Ordinance is like a statute prohibiting bikini bathing suits to protect the sensibilities of home-owners who have chosen to build near the beach.

CONCLUSION

It is respectfully submitted that the judgment of the District Court of Appeal should be reversed.

Respectfully submitted,

IRWIN KARP
Attorney for The Authors League of America, as amicus curiae
234 West 44th Street
New York, N.Y. 10036